

REMARKS

At the time of the Office Action dated May 24, 2007, claims 1-11 were pending and rejected in this application.

CLAIM 11 IS REJECTED UNDER 35 U.S.C. § 102 FOR ANTICIPATION BASED UPON BARTZ ET AL., U.S. PATENT NO. 6,701,342 (HEREINAFTER BARTZ)

On pages 2-3 of the Office Action, the Examiner asserted that Bartz discloses the invention corresponding to that claimed. This rejection is respectfully traversed.

The factual determination of anticipation under 35 U.S.C. § 102 requires the identical disclosure, either explicitly or inherently, of each element of a claimed invention in a single reference.¹ Moreover, the anticipating prior art reference must describe the recited invention with sufficient clarity and detail to establish that the claimed limitations existed in the prior art and that such existence would be recognized by one having ordinary skill in the art.² As part of this analysis, the Examiner must (a) identify the elements of the claims, (b) determine the meaning of the elements in light of the specification and prosecution history, and (c) identify corresponding elements disclosed in the allegedly anticipating reference.³ This burden has not been met.

¹ In re Rijckaert, 9 F.3d 1531, 28 USPQ2d 1955 (Fed. Cir. 1993); Richardson v. Suzuki Motor Co., 868 F.2d 1226, 1236, 9 USPQ2d 1913, 1920 (Fed. Cir. 1989); Perkin-Elmer Corp. v. Computervision Corp., 732 F.2d 888, 894, 221 USPQ 669, 673 (Fed. Cir. 1984).

² See In re Spada, 911 F.2d 705, 708, 15 USPQ 1655, 1657 (Fed. Cir. 1990); Diversitech Corp. v. Century Steps, Inc., 850 F.2d 675, 678, 7 USPQ2d 1315, 1317 (Fed. Cir. 1988).

³ Lindermann Maschinenfabrik GMBH v. American Hoist & Derrick Co., 730 F.2d 1452, 221 USPQ 481 (Fed. Cir. 1984).

On page 3 of the Office Action with regard to independent claim 1, the Examiner asserted the following:

establishing an SLA directly implicating a performance level for an underlying resource (Fig. 6, block titled SLO2, referencing the performance level for an underlying resource (for example server response time) to provide a response time less than or equal to 5 seconds; column 9, lines 30-67 and column 10, lines 1-11 that describe SLO1 and SLO2 as well as their impact on the SLA). (emphasis added)

Applicants respectfully submit that "server response time" does not disclose an underlying resource. Server response time is a characteristic of a server, which can be considered an underlying resource. However, Bartz does not identify this particular underlying resource.

On page 3 of the Office Action with regard to independent claim 1, the Examiner asserted the following:

noting at least one resource upon which said underlying resource depends (resources affecting throughput);

Not only has the Examiner failed to specifically identify, within Bartz, the claimed feature that corresponds to the claimed underlying resource, the Examiner has failed to specifically identify, within Bartz, the features corresponding the claimed "at least one resource" upon which the underlying resource depends. Merely asserting that "resources affecting throughput" is insufficient to establish that Bartz identically discloses the limitations, as claimed.

On page 3 of the Office Action with regard to independent claim 1, the Examiner further asserted the following:

receiving an event arising from said at least one resource (Fig. 6, SLO1 blocks 84 and 86 that cause an event of throughput falling below 50kb/sec for 5 minutes; column 9, lines 30-67 and column 10, lines 1-11 that describe SLO1 and SLO2 as well as their impact on the SLA).

Throughput falling below 50kb/sec for 5 minutes does not correspond to the claimed "receiving an event." The throughput falling may be considered "experiencing an event," but the Examiner

has not established that one having ordinary skill in the art would consider experiencing an event to identically disclose the claimed receiving an event. In this regard, Applicants note that the throughput falling is not "received" given the broadest reasonable interpretation of this term by one having ordinary skill in the art. Applicants also note that Fig. 6 of Bartz is silent as to a resource (i.e., the event arises from the claimed at least one resource).

Therefore, for the reasons stated above, Applicants respectfully submit that the Examiner has failed to establish that Bartz identically discloses the claimed invention, as recited in claim 11, within the meaning of 35 U.S.C. § 102.

CLAIMS 1, 3, 8, AND 10 ARE REJECTED UNDER 35 U.S.C. § 103 FOR OBVIOUSNESS BASED UPON MAIN ET AL., U.S. PATENT NO. 5,893,905 IN VIEW BARTZ

On pages 5 and 9 of the Office Action, the Examiner asserted that one having ordinary skill in the art would have been motivated to modify Main in view of Bartz to arrive at the invention corresponding to that claimed. This rejection is respectfully traversed.

On page 5 of the Office Action with regard to independent claim 1, the Examiner asserted the following:

detecting an event arising from a specific resource (Fig. 5, blocks 510, 512, 514, 516, 518, and 520 that disclose three different scenarios that trigger events arising out of failure of specific resources to meet SLA criteria; column 7, lines 37-40 that detail some of the causes that trigger events).

Upon reviewing the Examiner's cited passages in Main, Applicants note the teaching of an event. However, Applicants are entirely clear as to what "specific resource" does the event arise from.

In this regard, Applicants note that the Examiner has failed to properly characterize the teachings of Main.

On page 5 of the Office Action with regard to independent claim 1, the Examiner further asserted the following:

determining whether based upon said event said specific resource cannot perform adequately to meet a term within an SLA which directly implicates said specific resource (column 8, lines 55-67 and column 9, lines 1-10 that disclose the details of the three failing scenarios mentioned above).

Again, the Examiner's cited passage does not refer to a specific resource. As such, the Examiner cannot properly assert that Main identically discloses "determining whether based upon said event said specific resource cannot perform adequately ... " when Main does not disclose the specific resource.

On pages 5 and 6, the Examiner relied upon Bartz to teach the claimed "determining whether based upon said event said specific resource inhibits another resource from performing adequately to meet a term within said SLA which does not directly implicate said specific resource, but directly implicates said another resource." In this regard, Applicants note that the Examiner employed similar analysis as to characterizing the teachings of Bartz when characterizing the teaching of Bartz in the rejection of claim 11 under 35 U.S.C. § 102. As already argued above by Applicants in response to this rejection, Bartz is silent as to the particular resource. Moreover, Bartz is also silent as to what specific resource is inhibited by the event and the determination of the same.

Therefore, even if Main was modified in view of Bartz, the claimed invention would not result, since neither Main nor Bartz teach all of the limitations for which Main and Bartz are

being relied upon to teach. Applicants, therefore, respectfully submit that the imposed rejection of claims 1, 3, 8, and 10 under 35 U.S.C. § 103 for obviousness based upon Main in view of Bartz is not viable and, hence, solicit withdrawal thereof.

**CLAIMS 2 AND 9 ARE REJECTED UNDER 35 U.S.C. § 103 FOR OBVIOUSNESS BASED UPON
MAIN IN VIEW OF BARTZ AND BARKAN ET AL., U.S. PATENT NO. 6,925,493 (HEREINAFTER
BARKAN)**

On pages 9-12 of the Office Action, the Examiner asserted that one having ordinary skill in the art would have been motivated to modify Main in view of Bartz and Barkan to arrive at the invention corresponding to that claimed. This rejection is respectfully traversed.

Claims 2 and 9 depend ultimately from independent claims 1 and 8, and Applicants incorporate herein the arguments previously advanced in traversing the imposed rejection of claims 1 and 8 under 35 U.S.C. § 103 for obviousness based upon Main and Bartz. The Examiner's tertiary reference to Barkan does not cure the argued deficiencies of the combination of Main and Bartz. Applicants, therefore, respectfully submit that the imposed rejection of claims 2 and 9 under 35 U.S.C. § 103 for obviousness based upon Main in view of Bartz and Barkan is not viable and, hence, solicit withdrawal thereof.

CLAIMS 4 IS REJECTED UNDER 35 U.S.C. § 103 FOR OBVIOUSNESS BASED UPON MAIN IN

VIEW OF BARKAN

On pages 12-14 of the Office Action, the Examiner asserted that one having ordinary skill in the art would have been motivated to modify Main in view of Barkan to arrive at the invention corresponding to that claimed. This rejection is respectfully traversed.

On page 13 of the Office Action with regard to independent claim 4, the Examiner asserted the following:

In the same field of endeavor, Barkan et al. clearly show and disclose a system with a service level manager programmed to establish a plurality of SLAs directly implicating selected resources (Fig. 2, SLA Manager block 33, SLA DB block 32, and SLA Engine block 31; column 5, lines 21-34 that describe the function of each of these blocks)

A review of column 5, lines 21-34 does not support the Examiner's assertion that Barkan discloses the claimed service level manager. The SLA Database 32 described by Barkan "contains SLA definitions that target the amount of service level promised to a customer." Absent from the teachings in Barkan as to either the SLA Manager 33 or the SLA Database 32 is a description of "a plurality of SLAs directly implicating selected resources," as claimed.

On page 13 of the Office Action with regard to independent claim 4, the Examiner further asserted the following:

a relationship database configured for coupling to a plurality of management applications programmed to manage said selected resources (Fig. 3, Infrastructure DB and Fig.2, Infrastructure Manager block 24; column 6, lines 25-31 which disclose that the Infrastructure Manager stores the information about the map of resources, i.e. what is the role of each resource, where it is connected, and which applications are influenced by it, in the Infrastructure DB).

Referring to column 6, lines 24-31, Barkan does not teach that the Infrastructure Manager 24 is "a plurality of management applications programmed to manage said selected resources."

Instead, the Infrastructure Manager 24 is described a "component ... responsible for holding information [the] map of resources."

On page 13 of the Office Action with regard to independent claim 4, the Examiner further asserted the following:

a modeling and evaluation system communicatively coupled to said relationship database and said service level manager and programmed to perform a real-time SLA impact analysis based both upon resources directly implicated by said SLAs and also upon resources which are related to said resources directly implicated by said SLAs (Fig. 2, SLA Engine block 31 and CSL Engine block 28 together functioning as a modeling and evaluation system, communicatively coupled to said relationship database Infrastructure DB via Infrastructure Manager 24 and SLA Manager 33; column 5, lines 21-36 and column 6, lines 25-31 that disclose the details of these blocks).

Although the Examiner asserts that the SLA Engine 31 and the CSL Engine 28 "together [function] as a modeling and evaluation system," Applicants respectfully disagree. The SLA Engine 31 is described in column 5, lines 31-34 as a component responsible for processing data and generating maps of a promised service level for a customer, and the CSL Engine 28 is described in column 5, lines 35-41 as a component for processing the measurement and events being reported. Absent from these teachings, however, is a discussion that these components of Barkan performing "modeling," as claimed.

Also absent from the Examiner's analysis is a clear identification of where Barkan teaches that these components "perform a real-time SLA impact analysis based both upon resources directly implicated by said SLAs and also upon resources which are related to said resources directly implicated by said SLAs." In this regard, Applicants note that the Examiner has not specifically identified, within Barkan, the "resources directly implicated" and the "resources which are related to said resources directly implicated."

Applicants, therefore, respectfully submit that the imposed rejection of claim 4 under 35 U.S.C. § 103 for obviousness based upon Main in view of Barkan is not viable and, hence, solicit withdrawal thereof.

**CLAIMS 5 AND 6 ARE REJECTED UNDER 35 U.S.C. § 103 FOR OBVIOUSNESS BASED UPON
MAIN IN VIEW OF BARKAN AND DUGAN ET AL., U.S. PATENT PUBLICATION NO. 2002/0083166
(HEREINAFTER DUGAN)**

On pages 14-16 of the Office Action, the Examiner asserted that one having ordinary skill in the art would have been motivated to modify Main in view of Barkan and Dugan to arrive at the invention corresponding to that claimed. This rejection is respectfully traversed.

Claims 5 and 6 depend ultimately from independent claim 4, and Applicants incorporate herein the arguments previously advanced in traversing the imposed rejection of claim 4 under 35 U.S.C. § 103 for obviousness based upon Main and Barkan. The Examiner's tertiary reference to Dugan does not cure the argued deficiencies of the combination of Main and Barkan. Applicants, therefore, respectfully submit that the imposed rejection of claims 5 and 6 under 35 U.S.C. § 103 for obviousness based upon Main in view of Barkan and Dugan is not viable and, hence, solicit withdrawal thereof.

**CLAIM 7 IS REJECTED UNDER 35 U.S.C. § 103 FOR OBVIOUSNESS BASED UPON MAIN IN
VIEW OF BARKAN AND BARTZ**

On pages 16 and 17 of the Office Action, the Examiner asserted that one having ordinary skill in the art would have been motivated to modify Main in view of Barkan and Bartz to arrive at the invention corresponding to that claimed. This rejection is respectfully traversed.

Claim 7 depends ultimately from independent claim 4, and Applicants incorporate herein the arguments previously advanced in traversing the imposed rejection of claim 4 under 35 U.S.C. § 103 for obviousness based upon Main and Barkan. The Examiner's tertiary reference to Bartz does not cure the argued deficiencies of the combination of Main and Barkan. Applicants, therefore, respectfully submit that the imposed rejection of claim 4 under 35 U.S.C. § 103 for obviousness based upon Main in view of Barkan and Bartz is not viable and, hence, solicit withdrawal thereof.

Applicants have made every effort to present claims which distinguish over the prior art, and it is believed that all claims are in condition for allowance. However, Applicants invite the Examiner to call the undersigned if it is believed that a telephonic interview would expedite the prosecution of the application to an allowance. Accordingly, and in view of the foregoing remarks, Applicants hereby respectfully request reconsideration and prompt allowance of the pending claims.

Although Applicants believe that all claims are in condition for allowance, the Examiner is directed to the following statement found in M.P.E.P. § 706(II):

Application No.: 10/672,777

When an application discloses patentable subject matter and it is apparent from the claims and the applicant's arguments that the claims are intended to be directed to such patentable subject matter, but the claims in their present form cannot be allowed because of defects in form or omission of a limitation, the examiner should not stop with a bare objection or rejection of the claims. The examiner's action should be constructive in nature and when possible should offer a definite suggestion for correction.

To the extent necessary, a petition for an extension of time under 37 C.F.R. § 1.136 is hereby made. Please charge any shortage in fees due in connection with the filing of this paper, including extension of time fees, to Deposit Account 09-0461, and please credit any excess fees to such deposit account.

Date: August 21, 2007

Respectfully submitted,

/Scott D. Paul/

Scott D. Paul

Registration No. 42,984

Steven M. Greenberg

Registration No. 44,725

Phone: (561) 922-3845

CUSTOMER NUMBER 46320